THE HIGH COURT OF SIKKIM : GANGTOK

WRIT PETITION (C) NO. 12 OF 2003

In the matter of a petition under Article 226 of the Constitution of India

and

in the matter of

1. Union of India,
Through the Secretary,
Department of Posts,
Ministry of Communication,
Dak Bhawan,
New Delhi – 110 001.

2. Director General,
Department of Posts,
Dak Bhawan,
New Delhi – 110 001.

3. Member (Personnel),
Postal Services Board,
Dak Bhawan,
New Delhi – 110 001.

4. Chief Post Master General,
West Bengal Circle,
Yogayog Bhawan,
Calcutta – 700 012. .... **Petitioners**

VERSUS

1. Bahadur Singh,
s/o Ramphal Singh,
Working for gain as the Director,
Indian Postal Services, Gorakhpur,
r/o B1/3, Sector 'D',
Aliganj, Lucknow, 24 (UP)

2. A. Devasher,
Post Master General (Personnel),
Department of Posts, Dak Bhawan,
New Delhi – 110 001.

3. M. Kumar,
Post Master General,
Kolkata Region,
Kolkata – 700 012.

4. S. K. Chakraborty,
Post Master General,
Vizag, Andhra Pradesh.

5. K.V.S. Ranjan,
Post Master General,
Kurnool,
Andhra Pradesh.

6. Kalpana Tewari,
Post Master General,
Now on deputation to
Department of Fertilizer,
C/o Dy. Director General (Personnel),
Department of Post, Dak Bhawan,
New Delhi – 110 001.

7. Col. Om Prakash,
Post Master General,
C/o Additional Director General (APS),
West Bengal III, Army H.Q.
R. K. Puram, New Delhi.

8. Col. Kamlesh Chandra,
Post Master General,
Allahabad, Uttar Pradesh.

9. A. N. D. Kachari,
Post Master General,
Dirugarh, Assam.

10. M. S. Humera Ahmed,
Post Master General,
Pune, Maharashtra.

11. K. Pillai,
Post Master General,
Now on training at N.D.C.,
C/o Dy. Director General (Personnel),
Department of Post, Dak Bhawan,
New Delhi – 110 001.

12. R. Handa,
Deputy Director General (Phil),
Department of Post, Dak Bhawan,
New Delhi – 110 001.

13. S. K. Sinha,
Post Master General,
Baraily, U.P.

14. Col. Y.P.S. Mohan,
Chief Post Master General,
C/o Additional General (APS),
West Block III, Army H.Q.,
R. K. Puram, New Delhi.

15. K. M. Patel,
Post Master General,
Mumbai, Maharashtra.

16. A. K. Srivastava,
Additional Director P.S.C.,
Indian Postal Services,
Gaziabad (U.P.).

17. R. R. P. Singh,
Post Master General,
Delhi.

18. Shoba Koshy,
Post Master General,
Deputation on Ministry of Health,
C/o Deputy Director General (Personnel),
Department of Post, Dak Bhawan,
New Delhi – 110 001.

19. H. K. Sharma,
Post Master General,
Ajmer, Rajasthan.

20. K. L. Khanna,
Post Master General,
Now on deputation to D.D.T,
Department of Post, Dak Bhawan,
New Delhi – 110 001.

21. S. S. Nair,
Post Master General,
Coimbatore, Tamil Nadu.

22. Indu Gupta,
Deputy Director,
Postal Staff College India,
Ghaziabad, U.P. .... **Respondents**

For the petitioner : Messrs S. P. Wangdi, Senior Central Government Standing Counsel and Karma Thinly, Assistant Central Government Standing Counsel.

For the respondent 1 : Messrs A. K. Upadhyaya, Sharmila Lama and Saraswati Pradhan, Advocates.

For the respondents 2 to 22 : None appears.

PRESENT: THE HON'BLE SHRI JUSTICE R. K. PATRA, CHIEF JUSTICE.
THE HON'BLE SHRI JUSTICE A. P. SUBBA, JUDGE.

Date of judgment: 2nd November, 2004.

J U D G M E N T

R. K. PATRA, C.J.

By this writ petition the Union of India through its officers of Department of Posts, Ministry of Communication seeks to assail the validity of the order dated 27.11.2001 made by the Central Administrative Tribunal, Calcutta Bench in OA1/SKM/2001 which was filed by the respondent no.1. By the impugned order, the Central Administrative Tribunal (hereinafter referred to as the Tribunal) has directed the departmental authority to communicate to the respondent no.1 the grading on his CRs below the bench-mark within a period of four weeks from the date of communication of the order with liberty to him (respondent no.1) to make representation against them and in the event any order is passed in his favour changing the gradings, the competent authority shall hold a Departmental Promotion Committee (in brief DPC) for review of his case after complying with necessary formalities.

2. The respondent no.1 filed the aforesaid OA no. 1/SKM/2001 before the Tribunal for quashing the order dated 26.3.2001 promoting the private respondents 2 to 22 to the Senior Administrate Grade in the pay scale of Rs.18400-500-22400 and for other consequential reliefs.

His case before the Tribunal was that he came to be appointed to officiate against the post of non-functional selection grade in the Junior Administrative Grade of the Indian Postal Service Group-A with effect from 1.10.1992 as per the notification dated 4.7.1994. In view of his seniority position, he became eligible for promotion to the post of Senior Administrative Grade in the pay scale of Rs.18400-22400 of the Indian Postal Service against the vacancies for the years 1998 and 2000. During his entire service career, he had no adverse remarks in his ACRs except for the periods from 19.9.1994 to 31.3.1995 and 1.4.1998 to 12.10.1998. Against the said adverse remarks, he made representations and the Member (Personnel), Postal Services Board, New Delhi on due consideration expunged the adverse remarks as per the order dated 6.10.1998 and 3.5.2000 respectively. In order to fill up the vacancies of the years 1998 and 2000 in the Senior Administrative Grade in the scale of Rs.18400-22400 a DPC was constituted to prepare a panel from amongst the eligible Junior Administrative Grade Officers of the Postal Service Group-A. The DPC considered his case along with others but did not recommend him for promotion although he was completely free from any adverse remarks following the expunction of the two adverse remarks mentioned above. The DPC did not consider the fact that the adverse remarks recorded in his

ACRs for the aforesaid two periods had been expunged and had that fact been taken into account he would have secured the bench-mark "very good" by the DPC and would have been promoted. His further allegation was that the ACR for the aforesaid two periods were written under prejudice, bias and in utter violation of the departmental rules and the DPC had to depend upon such bias, vague and illegal report. Consequently the grading determined by the DPC cannot be held to be correct.

The stand of the department before the Tribunal was that promotion to Senior Administrative Grade of Indian Postal Service Group-A was made on the recommendation of the departmentally constituted DPC by selection on merit from amongst the officers of Junior Administrative Grade of the service with 8 years regular service in the grade. The case of the respondent no.1 was also considered by the DPC but on his overall performance as revealed from his ACRs, he was not found fit to be selected by the DPC as he failed to fulfil the bench-mark of "very good".

3. Before the Tribunal, it was argued by the respondent no.1 that the expunction of the adverse remarks results in changing of the gradings of his CRs which was not done by the competent authority and because of consideration of such unchanged gradings by the DPC he

was prejudicially affected. The above contention was found favour with the Tribunal.

4. Shri Wangdi, learned Senior Central Government Standing counsel appearing for the department submitted that the last sub-para of para 174(12) of P & T Manual Vol. III provides that grading of an officer done on the basis of general remarks in the report should not be communicated even if it is adverse and therefore the Tribunal clearly erred in directing the departmental authority to communicate to the respondent no.1 all the gradings of his CRs for the years which are below the bench-mark so as to enable him to represent against them. He also contended that the grievance of the respondent no.1 before the Tribunal was limited to the extent of non-consideration of appropriate change in gradings consequent upon expunction of his adverse remarks for only two periods but the Tribunal exceeded its jurisdiction in enlarging scope of his grievance in directing the departmental authority to communicate to him all the gradings of his CRs for the years which are below the bench-mark. Learned counsel appearing for the respondent no.1 on the other hand submitted that the impugned direction of the Tribunal is fair and is based on the principle of natural justice and accordingly it does not call for interference by this Court.

5. We have perused the impugned order and duly considered rival submissions made by the parties.

6. The short question that arises for consideration is that whether the Tribunal is justified in law in giving an omnibus direction to the departmental authority to communicate to the respondent no.1 all the gradings of his CRs. The specific case of the respondent no.1 before the Tribunal was that the expunction of his adverse remarks for the two periods i.e. from 19.9.1994 to 31.3.1995 and 1.4.1998 to 12.10.1998 necessarily results in changing of gradings but the departmental authority did not change the gradings and the DPC erroneously did not take into account the fact of expunction of those adverse remarks and consequential change of grading. Had the DPC taken those facts into account it should have been given the bench-mark of "very good" and would have automatically recommended his case for promotion. The grievance of the respondent no.1 being limited as indicated above, the Tribunal clearly fell into error in directing the departmental authority to let know the respondent no.1 all the gradings for the years which are below the bench-mark to enable him to make representation. By this direction, the Tribunal has enlarged the scope of the respondent no.1's application. Respondent no.1 never wanted in his application that he should be given opportunity to make representations in respect of all the

gradings for the years which are below the bench mark in the CRs.

7. The Tribunal further committed error of law in disposing of the matter without examining the merit of the grievance raised by the respondent no.1. From the order dated 6.10.1998 (annexure A-2 colly to the application before the Tribunal) it would appear that the concerned authority while disposing of the respondent no.1's representation made against the adverse remarks recorded in his ACR for the period from 19.9.1994 to 31.3.1995 modified as follows:-

PART III

A-3	Knowledge of sphere of work	Satisfactory
B-2	Decision making ability	Satisfactory
B-3	Initiative	Satisfactory

Similarly in the order dated 3.5.2000 (annexure A-2 colly) the concerned authority modified the adverse entry for the period from 1.4.1998 to 12.10.1998 as follows:-

Part III column A.2 quality of output adverse remarks substituted by "satisfactory".

Part III-3.B — "The portion "the officer's demonstrated work performance has been average" would continue to hold good and the rest of the part stands expunged."

The above being the position of his ACRs for the two periods, it is incomprehensible that he could have got the grading of "very good" in his CRs.

We may state here that this is not a case of stepping down of a graded entry. Had it been a case of down-grading the question of violation of principle of natural justice would have arisen.

There is no dispute that the remarks of "average" in the CR is not an adverse entry. There is also no dispute at the bar that appointment to the Senior Administrative Grade is made on the recommendations of the DPC by selection on merit from amongst the officers of the Junior Administrative Grade of the service with 8 years regular service in the grade. The respondent no.1's ACR for the periods commencing from 1990 till March 2000 are hereunder:-

	Period	Controlling Officer	Reviewing Officer
	1.4.90 to 15.1.91	Good	Average
	1.4.91 to 31.3.92	Good	Good
	1.4.92 to 31.3.93	Good	Good
	1.4.93 to 4.8.93	Good	Not Reviewed
	14.8.93 to 11.1.94	Very Good	Very Good
*	19.9.94 to 31.3.95	Average	Average
	1.4.95 to 31.3.96	Good	Good
	27.4.96 to 31.3.97	Good	Good
	1.4.97 to 14.10.97	Good	Not Reviewed
	25.10.97 to 31.3.98	Good	Good
*	1.4.98 to 12.9.98	Average	Average
	1.11.98 to 31.3.99	Good	Good
	1.4.99 to 31.3.2000	Very Good	Very Good

* The starred marks mentioned above relate to the two periods against which the adverse remarks were modified.

The DPC considered the case of the respondent no.1 on its own objectives basing his entire service for the requisite number of years. The grading made by the DPC is independent of the grading made by the departmental authorities. Therefore the exercise which is to be done pursuant to the impugned direction of the Tribunal is a futile one.

8. For the aforesaid reasons, the impugned order passed by the Tribunal is illegal and cannot be supported. It is hereby quashed. The application filed by the respondent no.1 before the Tribunal hereby stands rejected.

9. In the result, the writ petition is allowed. No costs.

(R. K. Patra)
Chief Justice
02.11.2004

I agree.

(A. P. Subba)
Judge
02.11.2004

Dictation taken
&
typed by me
Dipak Saha